

REQUEST FOR COUNCIL ACTION

SUBJECT: Discussion and possible action regarding Resolution 15-*180*, authorizing the Mayor to execute a Mutual Settlement and Release of All Claims Agreement between the City of West Jordan and Jeffrey Robinson

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-180

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A
MUTUAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT
BETWEEN THE CITY OF WEST JORDAN AND
JEFFREY ROBINSON

WHEREAS, the City Council of the City of West Jordan has reviewed a Mutual Settlement and Release of all Claims Agreement between the City of West Jordan and Jeffrey Robinson; and

WHEREAS, the City Council of the City of West Jordan desires that the Mutual Settlement and Release of all Claims Agreement be executed by the Mayor; and

WHEREAS, the Mayor is authorized to execute this amendment pursuant to 1977 Utah Code Annotated §10-3-1223,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized to execute the Mutual Settlement and Release of all Claims Agreement between the City of West Jordan and Jeffrey Robinson, in an amount not to exceed \$103,000.00.

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 9th day of September 2015.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

Council Member Jeff Haaga

Council Member Judy Hansen

Council Member Chris McConnehey

Council Member Chad Nichols

Council Member Ben Southworth

Council Member Sophie Rice

Mayor Kim V. Rolfe

"AYE"

"NAY"

MUTUAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT

THIS MUTUAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2015 by and between the City of West Jordan, a political subdivision of the state of Utah ("City") and Jeffrey Robinson ("Robinson").

RECITALS

WHEREAS, Robinson was previously employed as the City Attorney for the City; and

WHEREAS, during his employment, Robinson was an exempt full-time employee of the City; and

WHEREAS, Robinson has or may have certain claims against the City which Robinson is willing to and will release and give up; Robinson will also provide the City with certain assurances that are important to the City; and

WHEREAS, the City has or may have certain claims against Robinson which the City is willing to and will release and give up; the City will also provide Robinson with certain assurances that are important to Robinson; and

WHEREAS, Robinson understands and acknowledges that he may accept the terms and conditions of this Agreement and Robinson agrees to provide the requested waivers and assurances or Robinson may alternatively choose not to sign this Agreement; and

WHEREAS, neither Robinson nor the City admits to any liability and the purpose of this Agreement is to settle and compromise any and all disputes among the Parties; and

WHEREAS, the City presented Robinson with a copy of this Agreement to review and consider on _____, 2015.

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Separation. In exchange for Robinson's settlement and release of all claims and other assurances as described in this Agreement, the City agrees to pay to Robinson in one lump-sum the amount of one hundred three thousand dollars (\$103,000.00). In further exchange of Robinson's release of all claims and assurances herein, the City agrees to give Robinson a release of all claims and other assurances as described in this Agreement. Robinson acknowledges these payments, considerations and promises as good, sufficient and valuable consideration for the promises, releases and waivers contained in this Agreement. Robinson agrees that he is not otherwise entitled to this consideration and that this consideration is accepted as the full and final resolution of all matters related to Robinson's employment with the City.

2. City Property. Robinson hereby represents and warrants that he has returned all city property to the City as of the Effective Date. Robinson shall retain possession of the external hard-drive, excluding any city-owned files or documents stored on the external hard-drive. The external hard-drive shall become Robinson's own personal property as of the Effective Date. Robinson shall make the external hard-drive available to any authorized City employee or agent for the purpose of allowing the City to make duplicate copies of any and all city-owned emails upon twenty-four (24) hours written notice from the City. All other city-owned documents and files on the external hard-drive remain the property of the City and must be immediately removed from the external hard-drive, if such documents and files have not been removed as of the Effective Date.

3. Professional Responsibility. Robinson shall continue to maintain the confidentiality of all confidential and proprietary information of the City. Pursuant to Rule 1.6 of the Utah Rules of Professional Conduct, Robinson shall abstain from utilizing confidential and proprietary information in any manner to assist any adverse party in any action against the City, its employees, or any associated entity at this time or at any time in the future.

4. Payment of Salary. Robinson acknowledges and represents that the City has paid all wages and accrued paid time off or leave due to him as of the Separation Date, except as provided in this Agreement.

5. Release of Claims. Robinson agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to him by the City. Robinson, on behalf of himself and his respective heirs, family members, executors and assigns, hereby fully and forever releases the City and its parent corporations, sister corporations and subsidiaries, affiliates, operating units, officers, directors, employees and former employees, investors, shareholders, administrators, partners, divisions, predecessor and successor corporations, and assigns, from, and agrees not to sue concerning, any and all claims, demands, actions, judgments, orders, duties, obligations, causes of action, damages, liabilities, costs, expenses of any kind, and liability of any kind or nature, whether in law or equity, relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that he may possess arising from any omissions, acts or facts (i) that are related or unrelated in any way to his employment with the City, or (ii) that have occurred up until and including the Effective Date of this Agreement including, without limitation:

(a) any and all claims relating to or arising from Robinson's employment relationship with the City and the termination of that relationship;

(b) any and all claims for, but not limited to, wrongful discharge of employment; termination in violation of public policy; discrimination; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; whistle blowing; false imprisonment; and conversion;

(c) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, Older Workers Benefit Protection Act; the Utah Anti-discrimination Act, and any other state statutory acts;

(d) any and all claims for violation of the federal or any state constitution, or any applicable local ordinances;

(e) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(f) any and all claims for attorneys' fees and costs.

This Paragraph 7 shall receive the broadest possible interpretation as a general and complete release as of the Effective Date of this Agreement. Robinson hereby agrees that the release set forth in this Paragraph 7 shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Agreement. Notwithstanding the foregoing, the Parties acknowledge the City's statutory duties to defend Robinson against third party lawsuits covered by UTAH CODE ANN. §§ 63G-7-902 and 52-6-201. The City understands that the release of claims in this Paragraph 7 does not and is not intended to release the City from its duty to defend under Sections 63G-7-902 and 52-6-201.

6. Acknowledgment of Waiver of Claims under ADEA. Robinson acknowledges that he is waiving and releasing any and all rights he may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. Robinson and the City agree that this waiver and release does not apply to any rights or claims that may arise under ADEA after the Effective Date of this Agreement. Robinson acknowledges that the consideration given for this waiver and release Agreement is in addition to anything of value to which Robinson was already entitled. Robinson further acknowledges that he has been advised by this writing that he should consult with an attorney prior to executing this Agreement.

7. Separation. As additional consideration for the promises, releases and waivers contained in this Agreement, the City agrees to designate the separation of employment as a resignation. If any employment inquiries are made to the City related to Robinson, the City may respond with dates of employment, rates of pay, and that the reason for the separation was a resignation. This Paragraph 7 shall in no way limit Robinson from seeking permission from past, current, or future City employees or elected officials to provide personal references on behalf of Robinson. Robinson may contact city officials or city council members of his own volition to request letters of recommendation from those individuals with the understanding that nothing in this Paragraph 7 shall forbid or require any past, current, or future City employees or elected officials to provide a personal reference on behalf of Robinson.

8. No Pending or Future Lawsuits. Robinson represents that he has no lawsuits, claims, or actions pending in his name, or on behalf of any other person or entity, against the

City or any other person or entity referred to herein. Robinson further represents that he does not intend to bring any claims on his own behalf or on behalf of any other person or entity against the City or any other person or entity referred to herein. Robinson agrees that in any EEOC administrative investigation and/or proceeding, Robinson shall not be entitled to recover any individual monetary relief or other individual remedies.

9. No Cooperation. Robinson hereby agrees that he will not act in any manner that might damage the business of the City. Robinson agrees that he will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against the City and/or any officer, director, employee, agent, representative, shareholder or attorney of the City, unless under a subpoena or other court order to do so.

10. Non-Disparagement. Robinson hereby agrees to refrain from any defamation, libel or slander of the City and its respective elected officials, officers, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns or tortious interference with the contracts and relationships of the City and its respective officers, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns. Robinson also agrees to refrain from publishing or causing to be published any derogatory comments, remarks, or statements concerning the City and its representatives in any forum including, but not limited to, all social media, e-mail, text messages, etc.

11. City No Pending or Future Lawsuits. City represents that it has no lawsuits, claims, or actions pending in its name, or on behalf of any other person or entity, against Robinson or any other person or entity referred to herein. City further represents that it does not intend to bring any claims on its own behalf or on behalf of any other person or entity against Robinson or any other person or entity referred to herein.

12. City No Cooperation. City hereby agrees that it will not act in any manner that might damage Robinson. City agrees that it will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against Robinson, unless under a subpoena or other court order to do so.

13. City Non-Disparagement. City hereby agrees to refrain from any defamation, libel or slander of Robinson or tortious interference with the contracts and relationships of Robinson. City also agrees to refrain from publishing or causing to be published any derogatory comments, remarks, or statements concerning Robinson and its representatives in any forum including, but not limited to, all social media, e-mail, text messages, etc. The City, Mayor and City Council members agree to cease and desist from any comments or activities that may have any potential to disparage Robinson in any way. Robinson understands and agrees that his release of claims under this Agreement is and includes a release of claims for any statements made by the City or any elected officials, officers, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns of the City prior to the Effective Date of this Agreement.

14. Confidentiality. Robinson agrees to maintain in confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Settlement Information"). Robinson agrees to take every reasonable precaution to prevent disclosure of any Settlement Information to third parties, and agrees that there shall be no publicity, directly or indirectly, concerning any Settlement Information, unless required by law.

15. Application for Employment. Robinson understands and agrees that, as a condition of this Agreement, he shall not be entitled to any employment with the City, its subsidiaries, or any successor at any time and Robinson hereby waives any right, or alleged right, of employment or re-employment with the City.

16. No Admission of Liability. The Parties understand, and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties hereto, or either of them, either previously or in connection with this Agreement shall be deemed or construed to be an acknowledgment or admission by either party of any fault or liability whatsoever to the other party or to any third party.

17. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

18. Authority. The City represents and warrants that the undersigned has the authority to act on behalf of the City and to bind the City and all who may claim through it to the terms and conditions of this Agreement. Robinson represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Agreement. Robinson warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

19. No Representations. Robinson represents that he has had the opportunity to consult with an attorney regarding this Agreement and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

20. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, the remainder of this Agreement shall continue in full force and effect without said provision.

21. Entire Agreement. This Agreement, and any agreements referenced herein, represent the entire agreement and understanding between the City and Robinson concerning Robinson's separation from the City, and this Agreement supersedes and replaces any and all prior agreements and understandings concerning Robinson's relationship with the City and Robinson's compensation by the City.

22. No Oral Modification. This Agreement may only be amended in writing signed by Robinson and the West Jordan City Council.

23. Governing Law. This Agreement shall be governed by the laws of the state of Utah.

24. Attorneys' Fees. Should an action be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in prosecuting such an action.

25. Mediation. If any disagreement or problem arises with respect to this Agreement, the Parties agree to first submit such a disagreement or problem to mediation before a qualified mediator practicing in Salt Lake County, Utah.

26. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

27. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or on behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that they have read this Agreement, have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel, understand the terms and consequences of this Agreement and of the releases it contains, and are fully aware of the legal and binding effect of this Agreement.

28. Effective Date. The Effective Date of this Agreement shall be the earliest of: (1) seven (7) days following the date Robinson signs this Agreement or (2) the date of Robinson's submission of a "no revocation" letter. ROBINSON ACKNOWLEDGES THAT HE MAY REVOKE THIS AGREEMENT WITHIN A PERIOD OF SEVEN (7) CALENDAR DAYS FOLLOWING THE DAY ON WHICH ROBINSON SIGNS THIS AGREEMENT. ANY REVOCATION WITHIN THIS SEVEN-DAY PERIOD MUST BE SUBMITTED IN WRITING ADDRESSED TO THE MAYOR, KIM ROLFE, AND SHALL STATE: "I HEREBY REVOKE MY ACCEPTANCE OF OUR MUTUAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT DATED _____, 2015, AND MUST BE PERSONALLY DELIVERED TO THE CITY RECORDER ON OR BEFORE 5:00 P.M ON THE SEVENTH (7th) CALENDAR DAY FOLLOWING THE DATE OF SIGNING THIS AGREEMENT. ROBINSON FURTHER ACKNOWLEDGES THAT BY SIGNING A "NO REVOCATION" LETTER THAT ROBINSON WAIVES AND DISCHARGES THE RIGHT TO REVOKE THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

CITY OF WEST JORDAN

By: _____

Its:

ROBINSON

Jeffrey Robinson

[Signature]

[Date]

No Revocation Letter

Kim Rolfe
Mayor
City of West Jordan
8000 South Redwood Road
West Jordan, Utah 84088

Dear Bryce:

Notwithstanding I have seven (7) days within which to revoke my agreement to the terms of our Severance Agreement and Waiver of Claims, I hereby notify you of my decision not to revoke my signature on the Agreement, and I agree that the Effective Date of the Agreement shall be the date you receive this letter.

Sincerely,

[Print name of Employee]

[Signature of Employee]

[Date]